

provide assurance of permanent availability of the culture through a depository.

Claims 1-35 and 40 have also been rejected under 35 U.S.C. §112, first paragraph, for the reasons set forth in the objection to the Specification.

Applicant's undersigned representative wishes to thank the Examiner for the telephone interview held on March 28, 1991. Pursuant to the Examiner Interview Summary Record mailed March 28, 1991, it is not necessary for the Applicants to provide a separate record of the substance of that interview.

Applicants' undersigned representative also wishes to thank the Examiner for the telephone interview held on April 5, 1991. During that interview, Applicants informed the Examiner that upon further reflection they did not wish to insert the proviso proposed during the interview held on March 28, 1991. Applicants informed the Examiner that, as stated in the previous interview, the term "cycloalkyl" does not include "bicycloalkyl" and the term "cycloalkenyl" does not include "phenyl". Applicants do not wish to add the proposed proviso since it is well known that cycloalkyl does not include bicycloalkyl, and that cycloalkenyl does not include phenyl. Further, since those terms are not so included, there is no basis in the Specification for inserting such a proviso. The Examiner suggested that Applicants cite a chemical dictionary to demonstrate

that the claimed terms do not include bicycloalkyl or phenyl.

Pursuant to the Examiner's suggestion, enclosed are copies of the title page and page 2 of Rodd's Chemistry of Carbon Compounds, Second Edition, Volume II, Part A, Elsevier Publishing Co., 1967. On page 2, subparagraph (a), the treatise defines the term cycloalkyl. It is stated there that "[t]he names of saturated monocyclic hydrocarbons (with no side chains) are formed by attaching the prefix 'cyclo' to the name of the acyclic saturated hydrocarbon... the generic name being cycloalkane". The treatise further defines cycloalkenes in the same subparagraph (a) wherein it is stated that "[m]ono- and di-olefinic hydrocarbons are cycloalkenes... and cycloalkadienes". Thus, the well-known definition of cycloalkyl is monocyclic hydrocarbons. Further, the well known definition of cycloalkenes is monocyclic mono-olefinic hydrocarbons. Phenyl is not a cycloalkene since it is a tri-olefinic hydrocarbon and falls into the special class of aromatic hydrocarbons.

Applicants have shown that the term cycloalkyl does not include bicycloalkyl and that the term cycloalkene does not include phenyl. Therefore, Applicants respectfully traverse the Examiner's rejection of claims 1-4, 10, 12, 17-18, 22, 26, 28, 33-35 and 40 under the judicially created doctrine of obviousness-type double patenting over claims 1-9 of

U.S. Patent No. 4,980,370. U.S. Patent No. 4,980,370 discloses and claims, inter alia, avermectin and milbemycin related compounds wherein the substituent at C-25 is a phenyl or a C₄ to C₉ bicycloalkyl group. The instant application claims, inter alia, avermectin and milbemycin related compounds wherein the substituent at C-25 is a C₃ to C₈ cycloalkyl or a C₅ to C₈ cycloalkenyl group.

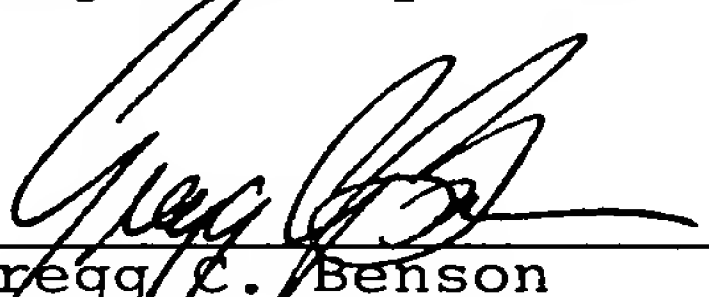
Applicants, through their undersigned representative, hereby aver that the deposit referred to in the specification, namely NCIB 12121, has been deposited under the terms of the Budapest Treaty for the purposes of patent procedure and that, pursuant to Rule 9.1 of the Treaty, said deposit is to be available for a period of at least five years after receipt of the most recent request for the furnishing of a sample and, in any case, for a period of at least 30 years after the date of deposit. The foregoing averment overcomes the Examiner's objection to the Specification under 35 U.S.C. §112, first paragraph. Further, said averment overcomes the Examiner's rejection of claims 1-35 and 40 under 35 U.S.C. §112, first paragraph.

Pursuant to Applicants' Supplemental Information Disclosure Statement filed December 14, 1990, Applicants cited four additional references of which EP 235 085 was not in English. Applicants have obtained an English translation of EP 235 085 and enclose a copy herewith. Applicants respectfully request that the

Examiner provide Applicants with a copy of the PTO-FB-A820 form filed December 14, 1990 whereon the Examiner's initials have been placed indicating that the references listed have been considered by the Examiner.

Based on the foregoing, claims 1-35 and 40 are in condition for allowance. Such prompt and favorable action is solicited.

Respectfully submitted,



Gregg C. Benson
Attorney for Applicants
Reg. No. 30,997
Tel.: (203) 441-4901

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Enclosures

Pfizer Inc.
Patent Department
Eastern Point Road
Groton, CT 06340